IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9430 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAILASHCHANDRA RAMLAL CHANDEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR ST MEHTA, APP, for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/12/2000

ORAL JUDGEMENT

Heard learned advocate Mr H.R. Prajapati for the petitioner and Mr S.T. Mehta for the respondents nos.1, 2 and 3 and Ms Davawala for respondent no.4.

2 The petitioner has challenged the order of detention dated 7.8.2000 passed by respondent no.2, Sub-Divisional Magistrate, Rajula City, District Amreli, in exercise of the powers conferred under Section 3 (2)(a) ofthe Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short).

3 The petitioner has beein dealing in a retail sale of kerosene as a hawker in the area known as Kamrej Cross Road, District Surat. That on 9.9.1999 on receipt of an intelligence report Civil Supplies Department carried out a raid on the residential premises of the petitioner and during the search it was found that 25 barrels each of 200 kg capacity filled with blue kerosene were stored and on enquiry the petitioner replied that said quantity of kerosene was supplied to him on 7.9.1999 by a driver of a tanker on a highway at around 8 PM. That the petitioner did not know the name of the driver nor could know the address or description of the tanker or the tanker owner and as such the said quantity of kerosene was seized after taking the samples for necessary test. That on receipt of FSL report it was found that the kerosene found from the possession of the petitioner was meant for supplying the same on ration card to the persons of lower income group. That on further enquiry statements were recorded and on the basis of material produced on record respondent no.2 as a detaining authority came to the conclusion that in order to prevent the petitioner from indulging into prejudicial activity, no other remedy would be fruitful and as such the impugned order of detention against the petitoner is passed.

4 The petitioner was served with the order on 22.8.2000 and was committed to Central Jail, Sabarmati, Ahmedabad.

5 The grounds of detention served to the petitioner are produced on record vide page 20 to 43.

6 The petitioner has challenged the validity of the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner that Civil Supplies Department had carried out the raid on 9.9.99 and since that date the department knew about the illegal possession of blue kerosene with the petitioner. However, the impugned order is passed on 7.8.2000 i.e. after about 10 months. That the said period of delay having not been properly explained in the detention order and the impugned order is based on stale incident and

therefore the same is bad in law.

7 The petition was presented and circulated for admission on 6.9.2000 on which date the Rule was issued. The respondents have appeared on due service. However, no affidavit on behalf of respondent no.2 has been filed. Respondent no.1 as well as respondent no.4 have filed affidavit-in-reply. The affidavit-in-reply filed by respondent no.1 is devoid of any explanation to the specific ground raised by the petitioner in para 4 (m) of the petition and as such neither the grounds of detention nor the affidavit-in-reply provide any reasonable explanation for the inordinate delay in passing the order of detention dated 7.8.2000.

8 It would be pertinent to note that the provisions contained in section 13 of the Act prescribe maximum period of detention as of six months from the date of actual detention of the detenu. In view of the said fact, in the absence of any cogent or convincing explanation for not taking effective action after it was found that the petitioner was in illegal possession of kerosene which was meant for subsidised retail sale, action taken on 7.8.2000 cannot be justified as a bona fide action. The contention raised on behalf of the detenu has got to be accepted on this count that if no action is taken for more than maximum period prescribed for detention, there was no immediate need for the authority to exercise the power u/s 3 (2) of the Act and as such the impugned order is bad on account of mala fide exercise of the power.

9 On the basis of the foregoing discussion, the petition is allowed. The impugned order of detention dated 7.8.2000 passed by respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner, Kailashchandra Ramlal Chandel, is ordered to be released forthwith if not required in any other case. Rule to that extent is made absolute. No order as to costs. Direct Service is permitted.

(AK TRIVEDI J.)

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